

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	Order No. 91-10
)	
Merced Laundry)	
160 West Main Street)	ADMINISTRATIVE ORDER
Merced, California)	PURSUANT SECTION 106
)	OF THE COMPREHENSIVE
Respondents:)	ENVIRONMENTAL RESPONSE,,
)	COMPENSATION, AND
R.A. Fields, Inc.)	LIABILITY ACT OF 1980
Steve Carlisle)	as amended, 42 U.S.C.
Phyllis Kirby)	Section 9606(a)
Catherine Mitchell)	
Anne Rahilly)	

PREAMBLE

This Administrative Order (Order) is issued on this date to Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and to the EPA Regions by U.S. EPA Delegation Nos. 14-14-A and 14-14-B.

By copy of this Order the State of California has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondents to undertake and complete emergency removal activities to abate an imminent and substantial endangerment to the public health and welfare or the environment that may be presented by the actual or threatened release of hazardous substances.

FINDINGS OF FACT

A. Site Description:

The Merced Laundry Site ("Site") is a dry cleaning facility located at 160 West Main Street, in the downtown area of Merced. The Site consists of a rectangular shaped parcel of land with an area of approximately 14,500 square feet. Merced Laundry is housed in a single story 13,000 square foot building on a concrete slab foundation. The Site is bound on the northeast by Main Street; on the northwest by "I" Street; on the southeast by an adjoining business and parking lot; and the southwest by an alley. The Site is located in a business/residential area. The nearest residents are located within 10.0 feet south of the Site.

Merced Laundry is the largest active dry cleaning facility in Merced. It has operated as an industrial and commercial dry cleaner at the 160 West Main Street location since approximately 1933.

B. Site Characteristics:

In 1986 during sampling mandated by State of California Assembly Bill AB1803, it was discovered that the groundwater in Merced was contaminated by the organic chemical tetrachloroethylene (PCE). Assembly Bill AB1803 required the testing of municipal drinking water systems for the presence of

1 organic chemicals.

2 The City of Merced Public Works Department and the Central
3 Valley Regional Water Quality Control Board (CVRWQCB) conducted
4 investigations to identify the sources of the PCE contamination.
5 Soil-gas surveys, facility chemical use questionnaires, sewer and
6 soil sampling surveys, and facility inspections indicated that
7 six active dry cleaners were the primary sources of PCE
8 groundwater contamination in the community. Merced Laundry was
9 one of these six dry cleaners.

10 In September of 1986, the City of Merced collected well
11 water and effluent samples from the Merced Laundry facility. The
12 results of the laboratory analysis of these samples indicated the
13 presence of PCE at elevated levels. The City of Merced then
14 requested an assessment to determine if Merced Laundry was a
15 potential source of the PCE contamination. Merced Laundry had
16 typically used 50 to 175 gallons of PCE per month in its dry
17 cleaning operations.

18 As a result of investigations conducted at the Merced
19 Laundry Site between 1987 and 1989, CVRWQCB was able to identify
20 the following sources of soil and groundwater contamination at
21 the Merced Laundry facility:

- 22 1) Waste water from the dry cleaning process was regularly
23 discharged from a concrete in-ground sludge sump into
24 the sewer lateral at the south side of the building.
25 Solvent present in the waste water leaked through
26 cracked, porous sewer lines into the soil.
- 27 2) A vapor condensation discharge pipe dripped PCE con-

1 taminated water onto the broken asphalt of a parking
2 lot on the northeast side of the building. Samples
3 from the discharge pipe collected by the CVRWQCB in
4 1988 contained PCE at 130 parts per million (ppm).
5 Soil at the surface beneath the pipe contained PCE in
6 concentrations of 10,000 ppm, and that PCE was present
7 in the groundwater at the Site at 780 parts per billion
8 (ppb).

9 Due to the imminent threat to drinking water supplies posed
10 by PCE groundwater and soil contamination in Merced, the
11 California Department of Health Services (CADOHS) and CVRWQCB
12 requested the assistance of the Environmental Protection Agency
13 Emergency Response Section (EPA ERS) in July of 1990. The high
14 levels of PCE contamination found at the Merced Laundry Site
15 prompted EPA to conduct a preliminary assessment at the Site in
16 January of 1991 in order to further characterize the
17 contamination.

18 During the preliminary assessment, EPA and the Technical
19 Assistance Team (TAT) sampled soil, soil-gas, and groundwater for
20 PCE contamination at the Merced Laundry. The results of this
21 assessment indicated that PCE is present in the soils at the Site
22 at levels up to 62,000 ppb, in the soil vapors beneath the Site
23 at levels up to 2200 ppm, and in the groundwater beneath the Site
24 at levels up to 16,000 ppb.

25 **C. Respondents:**

26 The present operator/lessee of Merced Laundry is R.A.
27 Fields, Inc., dba Merced Laundry. R.A. Fields, Inc. has been the

operator of Merced Laundry since January 1984.

Present property owners/lessors of the facility are Phyllis Kirby, owner of a one-half interest since 1982; Catherine Mitchell, owner of a one-quarter interest since 1986; Anne Rahilly, owner of a one-eighth interest since 1986; and Steve Carlisle, owner of a one-eighth interest since 1986.

D. National Priority List Status (NPL):

The Merced Laundry facility is not listed on the NPL, and has not been proposed to be added to the list as of this date.

E. Incident / Release Characteristics:

Soil samples from borings drilled around the Merced Laundry building during EPA's assessment have shown PCE levels ranging from non-detectable levels to levels of 12,000 ppm. The highest levels were found at the northeast side of the building. Other contaminated locations include the soil beneath underground solvent storage tanks near the center of the building and soils adjacent to the sewer lateral at the rear of the building. An active industrial supply well near the southwest corner of the building has shown extremely high PCE concentrations ranging from 590 ppm to 2000 ppm.

PCE is the primary contaminant present at the Site, but there may be other contaminants present. Other possible contaminants include Trichloroethylene (TCE), dichloroethylene (DCE), vinyl chloride and Stoddard solvent. TCE, DCE and vinyl chloride are breakdown products of PCE and they have all been found in the ragwash sump which feeds directly into the sewer lateral. Stoddard solvent was used at the Site in the past as a

dry cleaning solvent and has been detected in soil samples beneath the underground tanks at the Site.

F. Threats to Public Health, Welfare, and the Environment

Compared to many volatile organic compounds, PCE is very mobile, with relatively low solubility and vapor pressure. In its pure liquid state, it is heavier and less viscous than water and will sink through water. In the vapor phase, PCE's density is greater than air. PCE biodegradability is low in the soil-subsurface. PCE is generally found in three phases in the subsurface: liquid product, vapor, and dissolved in water. More than one phase usually exists in the subsurface after discharge.

PCE is a known carcinogen. The Water Quality Advisories for a 1 in a million incremental cancer risk estimate is 0.8 ppb. The State of California Department of Health Services Maximum Contaminant Level (MCL) for PCE is 5 ppb.

The Merced Laundry presents an imminent threat to the public health and welfare due to the existence of PCE in the groundwater and soil-subsurface. This PCE contamination could eventually migrate into the drinking water supply for the City of Merced. In addition, there is the threat of the PCE getting into the air and coming in direct contact with the general population.

CONCLUSIONS OF LAW

Based on the foregoing Findings, U.S. EPA has concluded that:

1. The Merced Laundry located at 160 West Main in Merced, California is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

2. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

3. Respondents Steve Carlisle, Phyllis Kirby, Catherine Mitchell and Anne Rahilly are the present "owners" of the Merced Laundry Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20). Respondent R.A. Fields, Inc. is the present operator of the Merced Laundry Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. Section 9601(20). Respondents were owners or operators of the Merced Laundry Site at the time of disposal of the hazardous substances at the Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.

4. The volatile organic compounds found at the Site, including tetrachloroethylene (PCE), trichloroethylene (TCE), 1,2 - dichloroethylene (DCE) and vinyl chloride, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

5. The presence of hazardous substances on the Site and the potential for those substances to leak, mix and migrate constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law, the Director of the Hazardous Waste Management Division, EPA Region IX, has made the following determinations:

1. The actual or threatened release of hazardous substances from Merced Laundry may present an imminent and substantial

1 endangerment to the public health, welfare, or the environment.

2 2. The actions required by this Order, if properly performed,
3 are consistent with the National Contingency Plan (NCP), 40
4 CFR Part 300 and CERCLA, and are necessary to protect the public
5 health, welfare and the environment.

6 3. The conditions present at Merced Laundry constitute a threat
7 to public health or welfare and the environment based upon
8 consideration of the factors set forth in the NCP at 40 CFR
9 section 300.415(b). These factors include, but are not limited
10 to, the following:

- 11 a. actual or potential contamination of drinking water
12 supplies;

13 This factor is present at Merced Laundry due to the existence of
14 PCE in the groundwater.

- 15 b. high levels of hazardous substances in soils largely at
16 or near the surface that may migrate;

17 This factor is present at Merced Laundry due to the existence of
18 PCE in the soils and in the soil vapors.

- 19 c. the inability of other appropriate Federal or

20 State response mechanisms to respond to the release;

21 This factor is present since EPA's assistance at the Site was
22 requested by the California Department of Health Services and the
23 Regional Water Quality Control Board due to their difficulty in
24 implementing an effective cleanup at the Merced Laundry Site.

- 25 d. other situations or factors which may pose threats
26 to public health or welfare or the environment.

27 If the conditions present at the facility persist, the remaining

1 PCE in the soil will migrate into the groundwater, further
2 exacerbating the problem of drinking water source contamination.

3 ORDER

4 Based upon the foregoing Findings, Conclusions and
5 Determinations, and pursuant to Section 106(a) of CERCLA, 42
6 U.S.C. Section 9606(a), it is hereby Ordered that Respondents
7 undertake the following actions under the direction of EPA's On-
8 Scene Coordinator.

9 1. Within thirty (30) calendar days after the effective date of
10 this Order, the Respondents shall submit to U.S. EPA for
11 approval, a Work Plan for the removal activities ordered below in
12 paragraph four. The Work Plan shall provide a concise
13 description of the activities to be conducted to comply with the
14 requirements of this Order and deadlines for commencement and
15 completion of all tasks, consistent with paragraph 4(a) below.
16 The Work Plan shall be reviewed by U.S. EPA, which may approve,
17 disapprove, require revisions, or modify the Work Plan.
18 Respondents shall implement the Work Plan as finally approved by
19 U.S. EPA. Once approved, the Work Plan shall be deemed to be
20 incorporated into and made a fully enforceable part of this
21 Order.

22 2. The Work Plan shall include provisions for site assessment
23 and characterization, contain a site safety and health plan, a
24 sampling and analysis plan, and a schedule of the work to be
25 performed. The site safety and health plan shall be prepared in
26 accordance with EPA's Standard Operating Safety Guide, dated
27 November, 1984 and updated July, 1988, and with the Occupational

1 Safety and Health Administration (OSHA) regulations applicable to
2 Hazardous Waste Operations and Emergency Response, 29 CFR Part
3 120. The Work Plan and other submitted documents shall
4 demonstrate that the Respondents can properly conduct the actions
5 required by this Order.

6 3. Respondents shall retain a contractor qualified to undertake
7 and complete the requirements of this Order, and shall notify
8 U.S. EPA of the name of such contractor within 15 days of the
9 effective date of this Order. U.S. EPA retains the right to
10 disapprove of any, or all, of the contractors and/or
11 subcontractors retained by the Respondents. In the event U.S.
12 EPA disapproves of a selected contractor, Respondents shall
13 retain a different contractor to perform the work, and such
14 selection shall be made within two (2) business days following
15 U.S. EPA's disapproval.

16 4. Within 15 calendar days after U.S. EPA approval of the Work
17 Plan, Respondents shall implement the Work Plan as approved or
18 modified by U.S. EPA. Failure of the Respondents to properly
19 implement all aspects of the Work Plan shall be deemed to be a
20 violation of the terms of this Order. All documents, plans, work
21 and phases of the implementation of the Work Plan are subject to
22 the comment and approval of the EPA On-Scene Coordinator. Upon
23 EPA comment on any document or plan, the Respondents shall
24 incorporate those comments and resubmit the document or plan.
25 The Work Plan shall require the Respondents to perform, at a
26 minimum, the following removal activities:

27 a. Characterize the horizontal and vertical extent

1 of soil contamination under the Merced Laundry building.

2 b. Propose a plan for the removal of the soil contamination

3 for EPA approval.

4 c. Conduct a pilot test for the selected removal method.

5 d. Construct and begin operation of the removal method

6 after EPA approval of the proposed method.

7 e. Identify and discuss the method used to determine the

8 effectiveness of the removal.

9 5. Each Respondent shall fully implement the plan as approved by

10 EPA within the required time period, and shall fully cooperate

11 with each other in carrying out any and all activities required

12 pursuant to this Order.

13 6. Respondents shall provide EPA with written weekly summary

14 reports. These reports should contain a summary of the previous

15 week's activities and planned upcoming events.

16 7. EPA shall be informed at least forty-eight (48) hours prior

17 to any on-site work.

18 8. All sampling and analysis shall be consistent with the

19 "Removal Program Quality Assurance/Quality Control Interim

20 Guidance: Sampling, QA/QC Plan and Data Validation," EPA OSWER

21 Directive 9360.4-01, dated February 2, 1989.

22 9. All materials containing hazardous substances, pollutants or

23 contaminants removed pursuant to this Order shall be disposed of

24 or treated at a facility approved by the On-Scene Coordinator and

25 in accordance with the Resource Conservation and Recovery Act of

26 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the

27 U.S. EPA Revised Off-Site Policy, and all other applicable

1 Federal, State, and local requirements.

2 10. Within ten (10) days of the effective date of this Order,
3 the Respondents shall designate a Project Coordinator. To the
4 greatest extent possible, the Project Coordinator shall be
5 present on the Site or readily available during work on the Site.
6 The U.S. EPA has designated Donn Zuroski as its On-Scene
7 Coordinator. The On-Scene Coordinator and the Project
8 Coordinator shall be responsible for overseeing the
9 implementation of this Order. To the maximum extent possible,
10 communication between the Respondents and the U.S. EPA, and all
11 documents, reports and approvals, and all other correspondence
12 concerning the activities relevant to this Order, shall be
13 directed through the On-Scene Coordinator and the Project
14 Coordinator.

15 11. The U.S. EPA and the Respondents shall each have the right
16 to change their respective designated On-Scene Coordinator or
17 Project Coordinator. U.S. EPA shall notify the Respondents,
18 and Respondents shall notify U.S. EPA, as early as possible
19 before such a change is made, but in no case less than 24 hours
20 before such a change. Notification may initially be verbal, but
21 shall promptly be reduced to writing.

22 12. The U.S. EPA On-Scene Coordinator shall have the authority
23 vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300,
24 as amended, including the authority to halt, conduct, or direct
25 any work required by this Order, or to direct any other response
26 action undertaken by U.S. EPA or the Respondents at the Merced
27 Laundry Site.

1 **13.** No extensions to the above time frames shall be granted
2 without sufficient cause. All extensions must be requested in
3 writing, and shall not be deemed accepted unless approved in
4 writing by U.S. EPA.

5 **14.** All instructions by the U.S. EPA On-Scene Coordinator or
6 his designated alternate shall be binding upon the Respondents.

7 **15.** To the extent that the Merced Laundry facility or other
8 areas where work under this Order is to be performed is owned by,
9 or in possession of, someone other than the Respondents,
10 Respondents shall obtain all necessary access agreements. In the
11 event that after using their best efforts, Respondents are unable
12 to obtain such agreements, Respondents shall immediately notify
13 U.S. EPA. U.S. EPA may then assist Respondents in gaining access
14 to the extent necessary to effectuate the response activities
15 described herein, using such means as it deems appropriate.

16 **16.** Respondents shall provide access to the Site to U.S. EPA
17 employees, contractors, agents, and consultants at reasonable
18 times, and shall permit such persons to be present and move
19 freely in the area in order to conduct inspections, including
20 taking photographs and videotapes of the Site, to perform
21 cleanup/stabilization work, to take samples to monitor the work
22 under this Order, and to conduct other activities which the U.S.
23 EPA determines to be necessary.

24 **17.** Nothing contained herein shall be construed to prevent
25 U.S. EPA from seeking legal or equitable relief to enforce
26 the terms of this Order, or from taking other legal or equitable
27 action as it deems appropriate and necessary, or from requiring

1 the Respondents in the future to perform additional activities
2 pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other
3 applicable law.

4 **18.** The provisions of this Order and the directions of the
5 On-Scene Coordinator shall be binding on the employees, agents,
6 successors, and assigns of the Respondents.

7 **19.** This Order shall be effective upon receipt by the
8 Respondent. On or before ten (10) calendar days of the effective
9 date of this Order, Respondents shall provide notice, verbally or
10 in writing, to U.S. EPA stating their intention to comply with
11 the terms of this Order. Verbal notification must be followed in
12 writing within three (3) calendar days. In the event any
13 Respondents fail to provide such notice, those Respondents shall
14 be deemed not to have complied with the terms of this Order.

15 **20.** Copies of all records and files relating to hazardous
16 substances found on the Site shall be retained for six years
17 following completion of the activities required by this Order and
18 shall be made available to the U.S. EPA prior to the termination
19 of the removal activities under this Order.

20 **21.** The Respondents shall submit a final report summarizing the
21 actions taken to comply with this Order. The report shall
22 contain, at a minimum: identification of the Site, a description
23 of the locations and types of hazardous substances encountered at
24 the Site upon the initiation of work performed under this Order;
25 a chronology and description of the actions performed (including
26 both the organization and implementation of response activities);
27 a listing of the resources committed to perform the work under

1 this Order (including financial, personnel, mechanical and
2 technological resources); identification of all items that
3 affected the actions performed under the Order and discussion of
4 how all problems were resolved; a listing of quantities and types
5 of materials removed from the Site; a discussion of removal and
6 disposal options considered for any such materials; a listing of
7 the ultimate destination of those materials; and a presentation
8 of the analytical results of all sampling and analyses performed
9 and accompanying appendices containing all relevant paperwork
10 accrued during the action (e.g., manifests, invoices, bills,
11 contracts, permits). The final report shall also include an
12 affidavit from a person who supervised or directed the
13 preparation of that report. The affidavit shall certify under
14 penalty of law that based on personal knowledge and appropriate
15 inquiries of all other persons involved in preparation of the
16 report, the information submitted is true, accurate and complete
17 to the best of the affiant's knowledge and belief. The report
18 shall be submitted within thirty (30) days of completion of the
19 work required by the U.S. EPA.

20 **22.** All notices, reports and requests for extensions submitted
21 under the terms of this Order shall be sent by certified mail,
22 return receipt requested, and addressed to the following:

23
24 one copy Donn Zuroski
25 On-Scene Coordinator
26 U.S. EPA (H-8-3)
27 75 Hawthorne Street
28 San Francisco, CA 94111
29
30

1
2
3 one copy Robert Ogilvie
4 Assistant Regional Counsel
5 U.S. EPA Office of Regional Counsel (RC-3-3)
6 75 Hawthorne Street
7 San Francisco, CA 94111
8
9

10 23. If any provision of this Order is deemed invalid or
11 unenforceable, the balance of this Order shall remain in full
12 force and effect.

13 OPPORTUNITY TO CONFER

14 With respect to the actions required above, Respondents may
15 within five (5) calendar days after receipt of this Order,
16 request a conference with the U.S. EPA. Any such conference
17 shall be held within seven (7) calendar days from the date of
18 request unless extended by mutual agreement of the parties. At
19 any conference held pursuant to the request, Respondents may
20 appear in person, or be represented by an attorney or other
21 representative. If any Respondent desires such a conference, the
22 Respondent shall contact Robert Ogilvie, Assistant Regional
23 Counsel, at (415) 744-1332 or Donn Zuroski, On-Scene Coordinator,
24 at (415) 744-2285. If such a conference is held, Respondent(s)
25 may present any evidence, arguments or comment regarding this
26 Order, its applicability, any factual determinations upon which
27 the Order is based, the appropriateness of any action which
28 Respondents are ordered to take, or any other relevant and
29 material issue. Any such evidence, arguments or comments should
30 be reduced to writing and submitted to U.S. EPA within three (3)
31 calendar days following the conference. If no conference is

1 requested, any such evidence, arguments or comments must be
2 submitted in writing within five (5) calendar days following the
3 issuance of this Order. Any such writing should be directed to
4 Robert Ogilvie, Assistant Regional Counsel, at the address cited
5 above.

6 Respondents are hereby placed on notice that U.S. EPA will
7 take any action which may be necessary in the opinion of U.S. EPA
8 for the protection of public health and welfare and the
9 environment, and Respondents may be liable under Section 107(a)
10 of CERCLA, 42 U.S.C. Section 9607(a), for the costs of those
11 government actions.

12 PENALTIES FOR NONCOMPLIANCE

13 Respondents are advised pursuant to Section 106(b) of
14 CERCLA, 42 U.S.C. Section 9606(b), that willful violation or
15 subsequent failure or refusal to comply with this Order, or any
16 portion thereof, may subject the Respondents to a civil penalty
17 of no more than \$25,000 per day for each day in which such
18 violation occurs, or such failure to comply continues. Failure
19 to comply with this Order, or any portion thereof, without
20 sufficient cause may also subject the Respondents to liability
21 for punitive damages in an amount three times the amount of
22 any cost incurred by the government as a result of the failure of
23 Respondents to take proper action, pursuant to Section 107(c)(3)
24 of CERCLA, 42 U.S.C. Section 9607(c)(3).

1 IT IS SO ORDERED on this 26th day of April, 1991.
2 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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4

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6 By: 

7 Jeff Zelikson, Director
8 Hazardous Waste Management Division
9 United States Environmental
10 Protection Agency Region IX
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